IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

..

:: JUDGMENT ::

Udai Singh & Anr. Vs. Bhana Ram & Ors.

S.B.CIVIL MISC. APPEAL NO.100/1993.

Against the award dated 16.12.1992 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.09/1989.

Date of Judgment ::: 25th May 2007.

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Ms. Abhilasha Sancheti for
Mr. Vikas Balia, for the appellants.
Mr. Rajesh Choudhary, for the respondents Nos.1 to 5.

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BY THE COURT:

This appeal has been preferred, by the transferee owner (appellant No. 1) and registered owner (appellant No. 2) of the vehicle involved in fatal accident, against the award dated 16.12.1992 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.09/1989 whereby the Tribunal has awarded compensation to the parents, brothers and sister of the victim Devaram (14¼ years) in the sum of Rs.2,14,000/-

together with interest at the rate of 12% per annum with stipulation of penal interest at the rate of 15% per annum for non-payment within three months; and has fastened joint and several liability for payment of the amount of compensation upon the appellants alongwith the driver and other transferee owner of the offending vehicle.

Background facts leading to this appeal are that the claimant-respondents Nos. 1 to 5 sought compensation against non-applicant No.1 Amar Singh as the driver, and non-applicant No.2(A) Mohan Singh (appellant No.2 herein), non-applicant No.2(B) Udai Singh (appellant No.1 herein) and the non-applicant No.2(C) Ratan Lal as the owners of the offending vehicle with the averments that on 22.12.1988 at about 2:30 p.m. in front of Government Health Centre, Sindhari on the road leading to Sindhari village, the victim Devaram while proceeding on his bicycle with his school-mates sustained injuries on being hit from behind by a truck bearing registration No. RJC 4127 driven rashly and negligently by the non-applicant No.1 Amar Singh; that Devaram was taken to the Health Centre at Sindhari, and as per medical advice was being taken to Balotra but he succumbed to the injuries on the way; that an FIR was lodged at Police Station, Sindhari and after investigation charge sheet was filed against the non-applicants Nos. 1 and 2(C) for

offences under Sections 279 and 304-A IPC, and Sections 3/113-B and 5/113-A of the Motor Vehicles Act, 1939. Stating liability of the non-applicants, the claimants averred that the deceased Devaram, son of the claimants Nos. 1 and 2 and brother of the claimants Nos. 3 to 5 was about 14 years and 4 months of age; that he was a brilliant student of 7th standard and was always ranking first in his class; that he was also working as accountant on shops earning Rs.600/- per month and contributing to the family; that in view of longevity in the family, he was likely to survive for next 55 years and would have earned Rs.3.96 lacs and contributed about Rs. 2.25 lacs to the family. Stating other losses including property damage of the bicycle, treatment and funeral expenses, and non-pecuniary loss, the claimants sought compensation to the tune of Rs. 4.75 lacs. Though the claimants stated non-applicant No.3 in the array of parties as the unnamed insurer of the offending vehicle, however, it appears that the vehicle was not carrying insurance coverage at the time of accident. The non-applicant No.1, driver of the vehicle and so also the non-applicant No.2(C), alleged subsequent transferee owner of the vehicle, chose to remain ex parte and never participated in the claim proceedings.

The non-applicants Nos. 2(A) and 2(B), Mohan Singh and Udai Singh (present appellants Nos. 2 and 1 respectively)

in their reply stated want of knowledge about the facts regarding the claimants, regarding the deceased, and his injuries. The non-applicants expressed ignorance about the accident with the averments that they were not aware as to where, when and how the accident occurred. While admitting the registration number of the vehicle being RJC 4127, the answering non-applicants expressed ignorance about the fact if non-applicant No.1 was the driver on the vehicle. It was averred that the said truck was of course registered in the name of the non-applicant No.2(A) Mohan Singh but much before the accident, the vehicle was sold to the non-applicant No.2(B) Udai Singh; that the non-applicant No.2(B) had further sold the vehicle prior to the accident to the non-applicant No.2 (C) Ratan Lal; that at the time of accident, the non-applicant No.2(C) alone was the owner of the vehicle; that the vehicle was in possession of the non-applicant No.2(C) only; and that in the agreement executed by him, the non-applicant No.2(C) has specifically taken over the responsibility towards any court case, challan, accident, claim etc. The amount of compensation claimed was put to contention with the submissions that exorbitant claim was made and on mere imaginations no claim could be allowed. It was maintained that in relation to the accident in question, the non-applicants Nos. 2(A) and 2(B) were not at all liable and the entire liability was

that of the owner, non-applicant No.2(C) who had employed the driver, non-applicant No.1.

On the pleadings of parties, the Tribunal framed the following issues for determination of the questions involved in the case:-

> "1. आया दिनांक 22.12.1988 को वाहन संख्या आर जे सी 4127 के चालक अमरसिंह द्वारा उक्त वाहन को तेज रफतार व लापरवाही से चलाया जाकर सिणधरी में सिणधरी चौराहे के पास दुर्घटनाकारित की गयी। जिस में देवाराम की मृत्यु कारित हुई-
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> प्रार्थीगण
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> 2. आया प्रार्थीगण क्लेम प्रार्थना पत्र के पद संख्या 11 के अनुसार मुआवजा पाने के अधिकारी है-
>
> प्रार्थीगण
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> 3. आया वक्त दुर्घटना उक्त वाहन विप्रार्थी संख्या 2 (स) के कब्जे में था।
>
> विप्रार्थी सं. 2, अ, ब
>
> 4. अनुतोष"

In evidence, the claimants, apart from production of relevant documentary evidence, examined Bhana Ram, father of the victim as AW-1; and Adu Ram, an eyewitness to the accident as AW-2. The non-applicant No. 2(B) Udai Singh deposed as NAW-1 and produced an agreement dated 24.11.1987, said to have been executed by the non-applicant No.2(C) Ratan Lal as Ex.NA-1. It may be pointed out that photostat of an agreement executed by Mohan Singh [non-

applicant No.2(A)] in favour of Udai Singh [non-applicant No.2 (B)] was put in cross-examination of Udai Singh by the claimants and was marked Ex.8.

After hearing the parties, the Tribunal held in issue No.1 that the fatal accident occurred for rash and negligent driving of the truck by Amar Singh. The Tribunal estimated average earnings of the deceased at Rs.600/- per month and his contribution to the family for 40 years at Rs.400/- per month; and thereby assessed pecuniary loss of the claimants at Rs.1,92,000/-. The Tribunal allowed Rs.20,000/- towards non-pecuniary loss, Rs.800/- towards damage of the bicycle, Rs.500/- towards transportation and Rs.700/- towards treatment expenditure. In this manner, the Tribunal assessed total loss for the claimants at Rs.2,14,000/-.

In issue No.3 relating to the ownership status of the offending vehicle, the Tribunal found that the vehicle was got released by Udai Singh stating himself as its owner in the application Ex.7 made to the Court; and he never stated that Ratan Lal was the owner of the vehicle. The Tribunal also referred to the two agreements placed on record and found that under the agreement Ex.8, Mohan Singh had given the vehicle subject to certain conditions to Udai Singh and for non-payment of installments, the vehicle was to go back in possession of Mohan Singh; and similarly, under the

agreement Ex.NA-1 executed by Ratan Lal, he was to make payment of installments else the vehicle was to remain with Udai Singh. The Tribunal deduced that one way or the other, all these three non-applicants Nos. 2(A), 2(B), and 2(C) were the owners of the vehicle that caused the fatal accident while being driven by the non-applicant No. 1 Amar Singh; and held all the four non-applicants jointly and severally liable for compensation.

The Tribunal, therefore, proceeded to make an award in favour of the claimants against the non-applicants in the sum of Rs.2,14,000/- and allowed interest @ 12% per annum from the date of filing of claim application with stipulation of penal interest @ 15% per annum for non-payment within three months.

The award aforesaid has been assailed by the non-applicants Nos. 2(B) and 2(A) while questioning the findings on responsibility towards the accident; on the quantum of compensation at Rs.2,14,000/- in respect of 14¼ years old victim with application of multiplier of 40; and about ownership of the vehicle whereby the appellants have been held jointly and severally liable;

So far the finding on responsibility towards accident is concerned, the appellants do not appear justified in questioning the same as they never joined this issue before

the Tribunal and did not lead any evidence in this regard. Moreover, having examined the evidence available on record, this Court is satisfied that the Tribunal has not erred in finding exclusive negligence of the truck driver for the accident when the truck hit and ran over the victim from behind after going down the road. AW-2 Adu Ram has clearly established that the truck hit the victim riding his bicycle on his correct side and ran him over and came to halt nearly 50-60 paces ahead. Site inspection memo Ex. 4 shows that going down the road, the truck crushed the victim and came to halt nearly 90 feet ahead the point of incident after taking a curved path. The truck was obviously at a brisk speed and was being driven in an uncontrolled manner that took toll on the life of the hapless bicyclist. Finding on issue No.1 is affirmed.

Assailing the quantum of compensation awarded by the Tribunal, learned counsel for the appellants Ms. Abhilasha Sancheti has referred to the principles enunciated by the Hon'ble Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas: AIR 1994 SC 1631, U.P. State Road Transport Corporation and others Vs. Trilok Chandra and others: (1996) 4 SCC 362 and United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and others: AIR 2002 SC 2607 and submitted that multiplier applied by the Tribunal in the present case at 40

stands much in excess of a reasonable multiplier available for the claimants.

Learned counsel for the claimants Mr. Rajesh Chaudhary on the other hand referred to the decision of the Hon'ble Supreme Court in the case of Manju Devi and another Vs. Musafir Paswan and another: 2005 RAR 105 (SC) and of this Court in Sri Lal and another Vs. Suryakant and another: 2005 RAR 436 (Raj.), Srichand Vs. Rajendra Kumar and others: 2005 (3) RLR 449, and National Insurance Co. Ltd. Vs. Smt.Rukmani and others: 2005 (1) RDD 134 (Raj.) and submitted that in the circumstances of a given case even excessive multiplier has been employed for assessment of just compensation; and in case of young victims compensation has been awarded to the parents to the tune of Rs. 2,25,000/- and in the present case the Tribunal has not erred in allowing Rs.1,92,000/- towards pecuniary loss for the claimants.

The award made by the Tribunal after assessment of pecuniary loss at Rs.1,92,000/- with application of multiplier of 40, and not taking into account the relevant factors including the one that the deceased was an unmarried person, might appear standing a bit on the higher side but then, the fact remains that the deceased was the elder son of the claimants Nos. 1 and 2 and was above 14 years of age. He has been shown maintaining a brilliant academic record. While

the Tribunal has applied a seemingly excessive multiplier of 40, fact remains that the Tribunal has taken a grossly inadequate multiplicand only at Rs.4,800/- per annum. When an adequate multiplicand is taken and appropriate multiplier is applied having regard to all the facts and circumstances, it cannot be said that assessment of pecuniary is highly excessive. Then, the amount awarded by the Tribunal is inclusive of non-pecuniary loss for the five claimants and so also other losses like the expenditure on treatment before the victim succumbed to the injuries, bicycle damage, and transportation.

Having examined the matter in totality, this court is of opinion the issue needs no further dilatation for the reason that even if the amount awarded by the Tribunal appears to be wee bit higher, cannot be said to be so exorbitant as to warrant interference in appeal. It is well settled that interference in the quantum of compensation is taken up in appeal only when the amount in question could be said to be highly excessive, or too low, as the case may be.

There is another strong reason for this Court not taking up the proposition of interference in the quantum of compensation in this case. The appellants contested the claim application principally on the ground that they were not liable at all having transferred the vehicle to the non-applicant

No.2(C). Quantum of compensation claimed though disputed in the reply, has not as such been put to contention during the trial; and even in their evidence, the appellants have not adduced any rebuttal in relation to the quantum of compensation claimed. In view of the stand taken by the appellants before the Tribunal, there appears no reason or justification for interfering with the quantum of compensation at the instance of the appellants.

However, it may be pointed out that the Tribunal cannot be said to have exercised its discretion in awarding interest properly; and the stipulation regarding penal interest @ 15% per annum for non-payment within three months is not in accord with law. Once the Tribunal had awarded interest @ 12% per annum from the date of filing of the claim application, there was no justification to put a stipulation of enhanced rate of interest. However, even when such proposition is not countenanced as such, in the totality of the facts and circumstances, this Court is satisfied that the same deserves no interference in this appeal.

On the question of liability for payment of the amount of compensation, learned counsel for the appellants strenuously contended that the Tribunal has erred in not considering the effect of the agreements produced on record and in not accepting the statement of the appellant No.1 Udai Singh of

the vehicle having been transferred to the non-applicant No. 2 (C) Ratan Lal; that it has been proved by evidence that the vehicle was ultimately transferred by the appellants and actual physical possession was handed over to the non-applicant No. 2(C) Ratan Lal who alone was in power, possession, and control of the vehicle; that the accident was caused by the driver employed by Ratan Lal who alone was the real owner of the vehicle in terms of Section 2(30) of the Motor Vehicles Act; and, therefore, liability for compensation, if any, ought to have been fastened only upon the non-applicant No.2(C), the real owner of the vehicle and not against the appellants who had already transferred the vehicle. Learned counsel relied upon the decision of Hon'ble Kerala High Court in Mathew Thankachan Vs. V.G. Manoharan & Ors.: AIR 1998 Kerala 128. Per contra, learned counsel for the respondents contended that the registration of the vehicle having not been transferred and looking to the nature of evidence produced on record, the Tribunal cannot be said to have erred in holding all the non-applicants liable for compensation. Learned counsel referred to a decision of this Court in Dhulchand Vs. Kanti Lal & Ors.: 2005 RAR 114 and submitted that the appellant No.2 Mohan Singh cannot avoid his liability being the registered owner of the vehicle; and the appellant No.1 Udai Singh also remains in liability for his admission of ownership of the vehicle

as made before the court while taking delivery of the offending vehicle after the accident.

Having given a thoughtful consideration to the matter, this Court is of opinion that on the facts and in the circumstances of this case, the Tribunal has not committed any error in placing the appellants in joint and several liability along with the alleged subsequent transferee owner Ratan Lal, for, one way or the other, each of these three persons answers to the description of owner, particularly for the purpose of considering the liability towards compensation for loss caused to the claimants due to the use of the vehicle in question.

The appellants have placed the propositions about transfer of the vehicle based on two agreements Ex. 8 and Ex.NA-1. However, it has not been shown if registration of the vehicle was transferred from the name of Mohan Singh (appellant No.2) in the name of Udai Singh (appellant No.1) and then in the name of Ratan Lal. A perusal of the photostat of so-called agreement Ex.8, though it has little probative value, makes it clear that thereunder the proposition is of conditional transfer to Udai Singh; and the registered owner Mohan Singh retained with him the right to detain the vehicle on non-payment of installments. Then, the registered owner Mohan Singh has not at all appeared in evidence. It is difficult to make out if the alleged transfer from Mohan Singh to Udai

Singh was a concluded and accomplished contract. Then, so far the transaction of transfer from Udai Singh to Ratan Lal is concerned, the agreement Ex.NA-1 is stated to have been executed by Ratan Lal. The alleged transaction suffers from the fundamental shortcoming that there is not shown any sale letter executed in favour of Ratan Lal by Udai Singh or Mohan Singh. Mere expression of assumption of the elements of ownership or of liability on the part of Ratan Lal cannot provide immunity to the appellants. Then, this alleged agreement is again subject to the payment of installments with the stipulation that the vehicle would be transferred in the name of Ratan Lal after payment of all the installments. Then, Udai Singh got the vehicle released from the court stating himself to be the owner of the vehicle under an agreement. In the vague averments taken in the application Ex.7 made by Udai Singh to the court for taking delivery of the vehicle, ownership of Ratan Lal was never stated.

The decision in Mathew Thankachan's case (supra) is of no assistance to the appellants. Therein, registered owner of the offending vehicle Mathew Thankachan had transferred it to M.K. Gopalan who in turn transferred it to E.I. John in whose custody the vehicle was when it caused the accident. It was found on facts that transfer of vehicle from Methew to Gopalan was a completed contract. Then, the Hon'ble Kerala High

Court held Gopalan and E.I. John both liable alongwith the driver. In the present case, even the first transfer from Mohan Singh to Udai Singh has not been established to be a completed contract. The allegation of transfer from Udai Singh to Ratan Lal is contradicted by Udai Singh's application Ex. 7 made to the court asserting himself as the owner. Then, as noticed above, the so-called agreements cannot be taken in proof of completed contract. In the aforesaid state of affairs, where no specific transfer of property has been brought about and completed, the Tribunal has rightly held liable all the persons answering to the description of owner of the vehicle.

This court in the case of Dr. Gop Ramchandani Vs. Onkar Singh: 1993 ACJ 577 has held both the registered owner as well as the transferee owner liable for payment of compensation and observed,-

> "15..... Since in fact the vehicle had been sold to Yogendra Singh and he was using the vehicle he also cannot escape the liability for payment of compensation on mere technicalities that the registration had not been transferred in his name and as has been held by this court in the cases of Sheela Rani, 1988 ACJ 206 (Rajasthan) and Avinash, 1988 ACJ 322 (Rajasthan), both Manju Mathur and Yogendra Singh are jointly and severally liable for payment of compensation to the injured."

Similarly, in the case of Dhul Chand Vs. Kanti Lal & Ors.: 2005 RAR 114 considering the liability of the registered owner and transferee owner of the vehicle this court has observed,-

> "Therefore, even if, the appellant would have proved handing over the actual possession of the vehicle to the subsequent purchaser, they cannot have avoided their liability. It is true that in view of the Division Bench decision of this Court in New India Assurance Co. Ltd. (supra) even if, the vehicle has not been registered in the name of the purchaser and the purchaser permits his employee to drive the vehicle and his driver causes the accident, then the said transferee is also liable vicariously, **but along with the registered owner."**
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> (emphasis supplied)

This Court is clearly of opinion that in the scheme of the provisions of the Motor Vehicles Act dealing with award of compensation for a vehicular accident, the interest of the claimants cannot be put to jeopardy on such propositions of alleged transfers of the offending vehicle under so-called agreements; nor the summary inquiry for award of compensation could be permitted to be converted into an elongated inquiry into the title of the vehicle. In such matters of alleged transfers under so-called agreements, the person or persons answering to the description of owner, whether as registered owner or for being in control and possession of the

vehicle, remain liable for compensation jointly and severally to the claimants irrespective of their inter se arrangements.

In the aforesaid view of the matter, this Court is satisfied that the Tribunal has not committed any error in not absolving the appellants of their liability and in holding them jointly and severally liable for payment of the amount of compensation.

As a result of the discussion aforesaid, this appeal deserves to be, and is dismissed. However, in the circumstances of the case, the parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

Mohan